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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,969	05/31/2002	Hans Heinrich Schmidt	GH 02010	1143

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EXAMINER	
BRATLIE, STEVEN A	

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/031,969	SCHMIDT, HANS HEINRICH	
	Examiner	Art Unit	
	Steven A. Bratlie	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 3/22/04

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1, 4-9, 12, 13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1, 4-9, 12, 13 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 3/22/04 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Applicant's arguments filed March 22, 2004 have been fully considered but they are not deemed to be persuasive.

It is within the purview of 35 U.S.C. 103 to select features from the prior art to effect results expected from these features (In re Skoner et al, 186 USPQ 80). Moreover, in evaluating such references, it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (In re Preda 159 USPQ 342; In re Heldt 167 USPQ 676). The test for obviousness is not whether the feature of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the references makes obvious to one of ordinary skill in the pertinent art (In re Keller, 208 USPQ 871).

2. Determinations of obviousness take into account the collective teachings of the prior art and level of ordinary skill in the art. The claimed subject matter takes into account only knowledge which a person having ordinary skill in this art would find obvious with the references relied upon by the examiner (In re McLaughlin 170 USPQ 209). The issue of obviousness is not only determined by what the references expressly state but also is determined by what they would fairly suggest to those of ordinary skill in the art (In re Delisle 160 USPQ 806; In re Bozek 163 USPQ 545). It is noted that skill, not the converse, is presumed on the part of those practicing in the art (In re Sovish 226 USPQ 771) and the conclusion of obviousness can be made from "common sense" of the person of ordinary skill in the art (In re Bozek 163 USPQ 545).

Since the claimed subject matter would have been obvious from the references, it is immaterial that references do not state the problem or advantage ascribed by applicant (In re Wiseman 201 USPQ 658).

3. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is redundant, see claim 4.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 4-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jansson in view of Fathauer, and French Patent #2597460.

Jansson discloses a wheeled cradle that locks to a container. Jansson lacks attachment to a fork lift and a steering wheel. Fathauer discloses the attachment to a fork lift. To the extent disclosed by applicant, the French Patent #2597460 discloses a

steering wheel. It would have been obvious to a mechanic with ordinary skill in the art at the time the invention was made to provide these features to the primary reference. The motivation is to increase the mobility of the cradle.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Bratlie whose telephone number is (703) 308-2669. The examiner can normally be reached on Mondays through Thursday from 6:30 to 5:00. Friday is the examiner's day off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

Steven A. Bratlie

STEVEN A. BRATLIE
PRIMARY EXAMINER

Bratlie/vs
April 16, 2004